

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte LARRY N. MCALLISTER

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Appeal No. 2000-0514  
Application No. 09/063,446

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ON BRIEF

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Before MCCANDLISH, Senior Administrative Patent Judge,  
MCQUADE, and GONZALES, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Larry N. McAllister originally took this appeal from the final rejection of claims 3 and 4, all of the claims pending in the application. Upon reconsideration, the examiner has

Appeal No. 2000-0514  
Application No. 09/063,446

since withdrawn the rejection of dependent claim 4 which now stands objected to as depending from a rejected base claim (see page 2 in the examiner's answer, Paper No. 8).

Accordingly, the appeal as to claim 4 is dismissed, leaving for review the standing rejection of claim 3.

#### THE INVENTION

The invention relates to "an adjustable shelving assembly, and more particularly to an assembly that includes horizontally and/or angularly mounted shelving without the need for dismantling the overall assembly when additional shelving is desired" (specification, page 2). Claim 3 reads as follows:

An adjustable shelving assembly comprising a plurality of vertically oriented support posts, at least one shelf retaining collar releasably secured to each post, each collar having an open front face constructed and arranged for placement of the collars around the vertical support posts, each shelf retaining collar having a frusto-conical interior surface, an interconnecting split sleeve between each collar and post, the split sleeve having an interior surface releasably connected to the support post and an exterior surface having a frusto-conical configuration complementary to the interior frusto-conical surface of the collar, a pair of

Appeal No. 2000-0514  
Application No. 09/063,446

upwardly extending shelf supporting hooks on each collar integral with the collar and extending outwardly parallel to one another from the open front face, and shelving interacting with the hooks of the collars to thereby connect the shelving to the support posts.

#### THE PRIOR ART

The references relied upon by the examiner as evidence of obviousness are:

|           |           |          |
|-----------|-----------|----------|
| Champagne | 4,079,678 | Mar.     |
| 21, 1978  |           |          |
| Nicely    | 4,750,626 | Jun. 14, |
| 1988      |           |          |

#### THE REJECTION

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nicely in view of Champagne.

Attention is directed to the appellant's brief (Paper No. 7) and to the examiner's answer (Paper No. 8) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

DISCUSSION

Nicely, the examiner's primary reference, discloses an adjustable shelving assembly comprising a plurality of vertical support posts 12, at least one shelf retaining collar in the form of a strap 16 releasably secured to each post and having an open front face (see Figure 4), a tapered (i.e., frusto-conical) interior surface 34 and a pair of integral tapered flanges 32 extending outwardly from the open front face, a split sleeve 18 between each collar and post and having an interior surface releasably connected to the post and an exterior surface with a tapered (i.e., frusto-conical) configuration complementary to the interior frusto-conical surface of the collar, and shelving 11 interacting with the tapered collar flanges via tapered slots 45 in corner pieces 17.

As conceded by the examiner (see page 4 in the answer), Nicely's shelving assembly does not meet the limitation in claim 3 requiring "a pair of upwardly extending shelf supporting hooks on each collar integral with the collar and

extending outwardly parallel to one another from the open front face," with the shelving interacting with the hooks to connect the shelving to the support posts. The corresponding structures in the Nicely assembly, tapered flanges 32, do not constitute hooks.

Champagne discloses a shelving system composed of corner posts 3, a shelving unit 5, and a support collar 8 detachably connected to each post for retaining the shelving unit. Each collar includes two parallel, upwardly extending hooks in the form of side arms 15 having notches 17 therein for interacting with inserts 25 on the shelving unit.

In rejecting claim 3 under 35 U.S.C. § 103(a), the examiner has concluded that

[i]t would have been obvious and well within the level of ordinary skill in the art to modify the structure of Nicely ('626) to include the interconnecting structure of Champagne since such structures are alternative, conventional sleeve and interconnecting structure, used in the same intended purpose of providing a quick disconnect, thereby providing structure as claimed [answer, page 4].

In order to meet the terms of claim 3, this proposed modification presumably would involve the reconfiguration of Nicely's tapered flanges 32 into parallel, upwardly extending hooks (along with a complementary reconfiguration of Nicely's tapered corner piece slots 45) and the retention of Nicely's split sleeve 18. The combined teachings of Nicely and Champagne, however, would not have suggested this highly selective change in Nicely's shelf retaining structure. Although Champagne does indicate that the shelving system disclosed therein "does not require wedge-shaped inserts" (column 1, lines 32 and 33), thereby implying some disadvantage to tapered or frusto-conical wedging surfaces of the sort disclosed by Nicely, there is nothing in this reference which would have motivated the artisan to eliminate the wedging aspect of Nicely's flanges 32 by replacing them with parallel, upwardly extending hooks, while at the same time retaining the wedging aspects embodied by Nicely's split sleeve 18. The only suggestion for picking and choosing from between Nicely and Champagne as the examiner has stems from impermissible hindsight knowledge derived from the appellant's disclosure.

Appeal No. 2000-0514  
Application No. 09/063,446

Thus, the combined teachings of Nicely and Champagne do not justify a conclusion that the differences between the subject matter recited in claim 3 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Hence, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 3 as being unpatentable over Nicely in view of Champagne.

SUMMARY

The decision of the examiner to reject claim 3 under 35 U.S.C. § 103(a) is reversed.

REVERSED

HARRISON E. MCCANDLISH )

Appeal No. 2000-0514  
Application No. 09/063,446

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|     | Senior Administrative Patent Judge | ) |                 |
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|     |                                    | ) | BOARD OF PATENT |
|     | JOHN P. MCQUADE                    | ) |                 |
|     | Administrative Patent Judge        | ) | APPEALS         |
| AND |                                    | ) |                 |
|     |                                    | ) | INTERFERENCES   |
|     | JOHN F. GONZALES                   | ) |                 |
|     | Administrative Patent Judge        | ) |                 |

JPM:lmb

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